

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

AARON JEAN,

No. 13-12072

Debtor(s).

Memorandum re Plan Confirmation and Motion to Dismiss

Chapter 13 debtor Aaron Jean is a volunteer firefighter at a station where creditor Michael Jablonowski is an assistant fire chief. In 2009, Jean purchased the real property at 5155 Cavedale Road, Glen Ellen, California, from Jablonowski for \$500,000.00. The terms were \$75,000.00 in cash and a note for the balance secured by a first position deed of trust.

In early 2012, Jean and his father-in-law, Paul Bello, met with Jablonowski and his wife to discuss renegotiation of the note. Bello had loaned Jean the \$75,000.00 down payment and Jean appears to have let Bello manage his personal financial affairs to a large extent. Jean had constructed a granny unit on the property where Bello sometimes lived. Jean did not obtain permits for the construction.

Negotiations regarding modification of the note were cordial at first but became acrimonious as the parties were unable to reach agreement. Bello told Jablonowski that he should accept Jean's proposal because if he did not Jean would stop paying on the note, stop paying property taxes, and probably file bankruptcy after their foreclosure, delaying their repossession of the property further. He

1 also told them about the construction done without permits, which would increase their expenses when
2 they finally regained possession.

3 The arguments Bello made to Jablonowski apparently backfired on Jean. Instead of agreeing
4 to Jean's terms or exercising the power of sale under the deed of trust, Jablonowski and his wife
5 commenced an action in state court to foreclose judicially. In addition to possession, they sought
6 damages for alleged waste due to Jean's failure to pay property taxes and construction of the granny
7 unit without permits.

8 After a five-day jury trial, the jury awarded \$44,263.37 in damages against Jean for failure to
9 pay the property taxes and construction of the granny unit. Jablonowski's motion for about
10 \$129,000.00 in attorneys' fees and costs had been tentatively granted when Jean filed his Chapter 13
11 petition on November 12, 2013.

12 Jean has filed a Chapter 13 plan requiring him to surrender the property to the Jablonowskis
13 and pay \$500.00 per month to the Chapter 13 trustee for 60 months, the maximum term allowed by the
14 Bankruptcy Code. The proposed payments are actually somewhat higher than his disposable income,
15 requiring him to either tighten his belt significantly or obtain help from Bello. The Chapter 13 trustee
16 has recommended confirmation, advising the court that the plan appears to meet all of the requirements
17 of § 1325(a) of the Code. Jablonowski and his wife object and seek dismissal of the case, arguing
18 only that Jean filed the Chapter 13 and proposed the plan in bad faith, so that the requirement of §
19 1325(a)(3) is lacking.

20 The first ground urged by the Jablonowskis as "bad faith" is that Jean scheduled their debt at
21 \$44,263.37 instead of the total with attorneys' fees and costs of \$173,648.94. However, the
22 Jablonowskis were in no way prejudiced by this. Pursuant to § 502(a), their claim is deemed allowed
23 as filed; a final order of the state court is not necessary. Even if it were, the Jablonowskis could have
24 easily obtained leave from this court to have the order entered.

25 The Jablonowskis' second ground for arguing bad faith is that their jury award for damages is
26 nondischargeable. This position is wrong on several levels.

1 First, it is dubious that the award is nondischargeable under any chapter of the Bankruptcy
2 Code. The obligation to pay property taxes is contractual; even the most willful breach of contract
3 does not usually result in a nondischargeable debt. *In re Jercich*, 238 F.3d 1202, 1206 (9th Cir. 2001).
4 And building a granny unit without permits probably does not meet the maliciousness requirement of
5 *Kawaahau v. Geiger*, 523 U.S. 57, 64 (1998).

6 Second, even willful and malicious damage to property is dischargeable in Chapter 13.
7 Congress intentionally limited nondischargeability for willful and malicious conduct to personal injury
8 by § 1328(a)(4).

9 Third, a nondischargeable debt does not necessarily render a Chapter 13 plan unconfirmable.
10 Nondischargeability of a debt is but one of numerous factors a court takes into account in considering
11 a Chapter 13 plan. If the payments proposed by Jean were nominal and designed for him to easily
12 escape the consequences of his actions, the court might agree with the Jablonowskis. However, the
13 payments Jean proposes are substantial, and he proposes to make them for the maximum time the
14 Bankruptcy Code permits. Even if the court were convinced that the Jablonowskis have a
15 nondischargeable claim against Jean, the size and length of the payments negates any conclusion that
16 Jean's plan is proposed in bad faith.

17 The Jablonowskis' last argument is based on a misapplication of case law. Relying on *In re*
18 *Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999), they argue that the court should find bad faith because
19 Jean filed "only to defeat state court litigation."

20 In order to argue based on *Leavitt*, the Jablonowskis first disregard the clear statement in that
21 case that a finding of bad faith is based on the totality of the circumstances, not one test. They next
22 disregard the word "only" as if it were not there. They then completely disregard the facts of that case,
23 which are entirely different from those shown here.

24 In *Leavitt*, the Court of Appeals affirmed the bankruptcy court's dismissal of a case with
25 prejudice for bad faith because the debtor intentionally concealed and undervalued assets and filed a
26 plan which proposed to pay zero on a state court judgment. The debtor had filed at least four cases

1 trying to do the same thing. His proposed payment under his plan were \$100 per month. The Court
2 found that dismissal for bad faith was well within the bankruptcy court's discretion.

3 The Court in *Leavitt* cited *In re Eisen*, 14 F.3d 469, 470 (9th Cir. 1994) and *In re Chinichian*,
4 784 F.2d 1440, 1445-46 (9th Cir.1986) to support its point that filing a Chapter 13 petition only to
5 thwart state court litigation can be a factor in finding bad faith. Neither case supports the
6 Jablonowskis' position. In *Chinichian* the purpose of the multiple filings was to frustrate a litigant
7 from enforcing a judgment for specific performance. In *Eisen* the purpose of the multiple filings was
8 to thwart enforcement of a state court judgment. Jean has not filed multiple petitions. His plan calls
9 for surrender of the property as required by the state court and payment of as much of the
10 Jablonowskis' judgment as he can. Confirmation of his plan is in no way inconsistent with *Leavitt*,
11 *Eisen* or *Chinichian*.

12 In this case, the purpose of the plan is to deal with the Jablonowskis' judgment, not avoid it.
13 The payments are substantial and the plan meets all the requirements of law. There is no suggestion of
14 any concealment of any assets or any other wrongful conduct. It is not *per se* bad faith, as the
15 Jablonowskis seem to argue, to file a Chapter 13 petition after losing a state court lawsuit.

16 For the foregoing reasons, the Jablonowskis' motion to dismiss will be denied, their objection
17 to the plan will be overruled, and the plan will be confirmed. Counsel for Jean shall submit an
18 appropriate form of order.

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20 Dated: March 31, 2014

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Alan Jaroslovsky
Chief Bankruptcy Judge